Supreme Court, U.S.
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No 90-1051

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

CAPTAIN J.P. TRISTANI, et al

Petitioners,

Vs.

EASTERN AIR LINES, INC., et al,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1.

Whether the post-petition status of the claims underlying this case require a core designation pursuant to 28 U.S.C. §157 even though the claims could exist independent of the Chapter 11 bankruptcy proceedings and are based solely on state law and on federal statutes other than the bnakruptcy statute.

2.

Whether parties are entitled to a jury trial in an Article III court when their claims are based on a tort injury and a breach of contract arising from state law and upon the Federal RICO Statute (Chapter 18 U.S.C.) and upon 1983 Discrimination Statute (42 U.S.C. §1983), all of which are independent of the Chapter 11 Bankruptcy Statute (Chapter 11 U.S.C.).

3.

Whether Eastern Air Lines should be required to fund the unfunded $281,540,000 of the pilots pension plan guaranteed by the Pension Benefits Guaranty Corporation.

4.

Whether Eleventh Circuit and/or Atlanta District Court has the authority to order th New York District Court to hear the appeal and/or try this case.

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The rules of this Court emphasize "concise" so this Reply will be concisely stated.

We are entitled to a jury trial on the issues of common law tort and

breach of contract and federal statutes regarding RICO and 1983 Discrimination. We contend that the Bankruptcy Court can not conduct a jury trial of any of these issues. In cases cited in our brief, the Eighth and Tenth Circuits held that a Bankruptcy Court could not conduct jury trials. Eastern relies on In Re Ben Cooper, Inc. in which the Second Circuit held that a Bankruptcy Court could conduct a jury trial. A certiorari was granted in that case but was remanded without a decision on that question. However, the Eleventh Circuit held a Bankruptcy Court could conduct trial but was reversed by this Court in Granfianciera, 109 S.Ct.2782 (July 23, 1989). Therefore, we contend that under the only Supreme Court ruling on this subject, the New

York Bankruptcy Court can not try this case and for that reason, among others, the Eleventh Circuit was in error in transferring the case from Atlanta to New York.

The automatic stay provisions of 11 U.S.C. §362 exempts therefrom post petition claims and noncore proceedings. There is no doubt that all of the Tristani claims actually occurred after Eastern had filed for bankruptcy in March of 1989, except that the underfunding of the pension plan and the conversion of money withheld from the Tristani paychecks occurred before and after the bankruptcy filing. In addition, these causes of action were not core proceedings since they stem from common law and U.S. statutes other

than the bankruptcy statutes. We contend, therefore, that transferring the instant suit from Atlanta to New York was in error.

The Adversary Proceeding in the Bankruptcy Court is on appeal to the New York District Court. It involves some of the same issues but the grounds of the appeal include these additional matters:

(1) No personal jursidiction over the Tristani parties because they were not served with the Adversary Proceedings.

(2) Denial of due process because the Tristani parties had no notice of the hearings on temporary or permanent injunction.

(3) Denial of due process because the hearing on the merits of the permanent injunction took place before the expiration of the time in which Tristani parties and Rolleston were allowed for filing answers and responsive pleadings.

(4) Bankruptcy Court did not have jurisdiction of Eastern's petition in bankruptcy because Eastern's principal office was in Florida.

The history of the case set forth in Respondent's Brief In Opposition is distorted, incorrect and incomplete, by failing to inform this Court, among other things, as follows:

(1) That Eastern, in writing, by and through its attorney, agreed

to the appeal from the Atlanta District Court to the Eleventh Circuit

(2) That Judge Jack T. Camp of the Atlanta District Court issued his Order as described in our original brief on March 2nd and that Judge Lifland of the New York Bankruptcy Court issued his injunction on March 17th. We were confronted with two different orders.

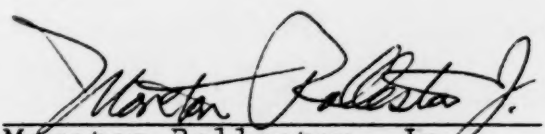
(3) That from February 11, 1990 when the original complaint was filed until July 1990, when Tristani moved for a default judgment, Eastern, Jet Capital, Texas Air and Lorenzo never filed an answer or other responsive pleadings. Under F.R.C.P. a motion to dismiss was not a responsive pleading.

(4) That Eastern Air Lines ceased operations on January 18, 1991 and the Trustee conducted an auction of most of the remaining assets on February 4 and 5, 1991.

(5) That the sanctions mentioned in Respondents' brief were granted under 11 USC 362(h) of the Bankruptcy Code but failed to mention the case of: In Re: Chateaugay Corporation, Reomar, Incorporated, The LTV Corporation, Et Al, Debtors, Maritime Asbestosis Legal Clinic v. LTV Steel Company, Inc., Et Al, docket 90-5032 in which the Second Circuit held in January 1991 that Section 362(h) "is applicable only to natural persons". Therefore, under that decision Judge Lifland's award of

sanctions is absolutely void.

(6) That on December 20, 1990 the Eleventh Circuit in Eastern Air Lines, Inc. v. Air Line Pilots Association International, Eastern Air Lines Master Executive Council, No. 90-5658, held that the striking Eastern pilots were entitled to be reinstated, in lieu of trainees, after November 22, 1989 when the pilots strike was terminated. Thus the employment contract of the pilots was upheld. This is the same contract which the Tristani plaintiffs originally alleged was breached by Eastern resulting in damages to the Plaintiffs.



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